

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

STATE OF TEXAS, ET AL.,
Plaintiffs,

v.

**DEPARTMENT OF THE INTERIOR,
ET AL.,**

Defendants.

§
§
§
§
§
§
§
§
§

CAUSE NO. 7:23-cv-00047-DC

JOINT MOTION TO MODIFY SCHEDULING ORDER DEADLINES

Plaintiffs in Case No. 7:23-cv-00047-DC-RCG, the State of Texas, the State of Kansas, and the State of Oklahoma (collectively, “State Plaintiffs”); Plaintiffs in Case No. 7:23-cv-00049-DC-RCG, Permian Basin Petroleum Association, National Cattlemen’s Beef Association, Texas Cattle Feeder’s Association, Kansas Livestock Association, Oklahoma Cattlemen’s Association, and New Mexico Cattle Grower’s Association (collectively, “Industry Plaintiffs”); and Defendants, the United States Department of the Interior, the United States Fish and Wildlife Service (the “Service”), Debra Haaland, in her official capacity as Secretary of the Interior, and Martha Williams, in her official capacity as Director of the Service, respectfully request modification of certain deadlines imposed by the Court’s September 13, 2023, Scheduling Order, Doc. 39. In support of this motion, the Parties state as follows:

1. The Court entered the Scheduling Order governing this case on September 13, 2023. Doc. 39.
2. The Scheduling Order contains, *inter alia*, deadlines regarding pleadings/joiner of parties, the production of the administrative record and motions on the same, as well as deadlines for the briefing of dispositive motions. Doc. 39.

3. Under the current scheduling order, Defendants shall produce a provisional administrative record and provide copies to each separately represented party no later than November 3, 2023.
4. The Service is in the process of compiling the provisional administrative record in these consolidated matters. Due to limited staff bandwidth and a higher volume of documents that require review than initially anticipated, the Service will not be able to produce a provisional administrative record for Plaintiffs' review by the previously agreed upon November 3, 2023, deadline.
5. In light of these circumstances, the Parties respectfully request modification of the existing case management deadlines to allow the Service sufficient time to compile the provisional administrative record and to afford the parties sufficient time to comply with the subsequent deadlines after production of the provisional record.
6. This is the first motion for modification of the Scheduling Order deadlines.
7. The Parties respectfully request that the Court modify the deadlines in Doc. 39 as follows:

	Existing Deadline	Modified Deadline
Defendants shall produce a provisional administrative record and transmit copies to each separately represented party (Doc. 39 ¶ 3(A))	November 3, 2023	December 1, 2023
The Parties shall meet and confer regarding administrative record issues (Doc. 39 ¶ 3(A))	December 4, 2023	January 4, 2024
Defendants shall lodge the Administrative Record with the Court and transmit copies to each separately represented party (Doc. 39 ¶ 3(B))	January 5, 2024	February 5, 2024
Plaintiffs file any motion to supplement or amend pleadings or join additional parties (Doc. 39 ¶ 2)	January 12, 2024	February 12, 2024

Plaintiffs file any objections or requests to supplement/amend the Administrative Record and any motion for leave to conduct discovery (Doc. 39 ¶ 3(C))	February 9, 2024	March 8, 2024
Defendants respond to any motions filed by Plaintiffs concerning the Administrative Record or leave to conduct discovery (Doc. 39 ¶ 3(D))	March 8, 2024	April 8, 2024
Plaintiffs notify the Court of any remaining issues regarding the Administrative Record or remaining requests for discovery (Doc. 39 ¶ 3(E))	March 22, 2024	April 22, 2024
All Parties file cross-motions for summary judgment (Doc. 39 ¶ 4)	April 26, 2024	May 3, 2024
All Parties file responses to cross-motions for summary judgment (Doc. 39 ¶ 4)	May 31, 2024	June 14, 2024
All Parties file replies in support of their cross-motions for summary judgment (Doc. 39 ¶ 4)	June 14, 2024	June 28, 2024

NOW THEREFORE, the Parties respectfully request that this Court enter an order as follows:

1. The Parties shall file all motions to amend or supplement pleadings or to join additional parties by **February 12, 2024**.
2. By **December 1, 2023**, Defendants shall produce a provisional administrative record and transmit copies to each separately represented party. The Parties shall meet and confer regarding administrative record issues by **January 4, 2024**.
3. By **February 5, 2024**, Defendants shall transmit to each separately represented party and lodge with the Court (1) the entire Administrative Record in this matter and (2) an affidavit authenticating the Administrative Record, detailing the process and procedure by which the Administrative Record was collected, and certifying its completeness.
4. By **March 8, 2024**, Plaintiffs shall file any objections or requests to supplement/amend the Administrative Record. Any disputes regarding the sufficiency, scope, or content of

the Administrative Record or the supplementation of the same not raised during consultation of the Parties and by motion or before the **March 8, 2024**, deadline will be deemed to have been waived. If Plaintiffs believe discovery is needed to supplement or amend the Administrative Record, they shall file a motion for leave to do so by this date with a copy of the specific discovery sought.

5. By **April 8, 2024**, Defendants shall respond to any of the following filed by Plaintiffs, if any: motion for leave to seek discovery, objections or requests to supplement/amend the Administrative Record.
6. By **April 22, 2024**, Plaintiffs shall notify the Court whether any pending motion for leave to conduct discovery and/or objections to or requests to supplement/amend the Administrative Record remain, if any. The Parties agree that no additional motions for leave to conduct discovery and/or objection to or requests to supplement/amend the Administrative Record will be filed on this date.
7. Motions for summary judgment shall be filed by **May 3, 2024**. Responses to motions for summary judgment shall be filed by **June 14, 2024**. Reply briefs supporting a party's motion for summary judgment shall be filed by **June 28, 2024**.

Respectfully submitted this 31st day of October, 2023:

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

KELLIE E. BILLINGS-RAY
Chief, Environmental Protection Division

/s/ Katie B. Hobson
Katie B. Hobson
Assistant Attorney General
State Bar No. 24082680
Katie.Hobson@oag.texas.gov

Brittany E. Wright
Assistant Attorney General
State Bar No. 24130011
Brittany.Wright@oag.texas.gov

Office of the Attorney General of Texas
Environmental Protection Division
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
Telephone: (512) 475-4239
Facsimile: (512) 320-0911

Attorneys for Plaintiff State of Texas

KRIS W. KOBACH
Attorney General of Kansas

JESSE A. BURRIS*
Assistant Attorney General
Jesse.Burris@ag.ks.gov

KANSAS ATTORNEY GENERAL'S OFFICE
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Tel: (785) 368-8197
Fax: (785) 296-3131

Attorneys for Plaintiff State of Kansas

GENTNER F. DRUMMOND
Attorney General of Oklahoma

GARRY M. GASKINS, II*
Solicitor General

Garry.gaskins@oag.ok.gov

ZACH WEST*
Director of Special Litigation
Zach.west@oag.ok.gov

JENNIFER L. LEWIS
Assistant Attorney General

OFFICE OF THE OKLAHOMA ATTORNEY
GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105
Tel: (405) 521-3921
Fax: (405) 521-6246
Attorneys for Plaintiff State of Oklahoma

/s/ Jeff Kuhnhen
Jeff Kuhnhen
Texas Bar No. 24078809
jeff.kuhnhen@kellyhart.com
Derek L. Montgomery
Texas Bar No. 24042264
derek.montgomery@kellyhart.com
KELLY HART & HALLMAN LLP
P.O. Box 3580
Midland, Texas 79701
Telephone: (432) 683-4691
Facsimile: (432) 683-6518

Marianne Auld
Texas Bar No. 01429910
marianne.auld@kellyhart.com
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 878-3543
Fax: (817) 878-9280

Attorneys for Industry Plaintiffs

TODD KIM, Assistant Attorney General
S. JAY GOVINDAN, Section Chief
NICOLE M. SMITH, Assistant Section Chief
U.S. Department of Justice
Environment and Natural Resources Division

Wildlife and Marine Resources Section

/s/ Caitlyn F. Cook

CAITLYN F. COOK

Trial Attorney

Maryland Bar No. 2112140244

U.S. Department of Justice

Environment and Natural Resources Division

Wildlife and Marine Resources Section

Ben Franklin Station

P. O. Box 7611

Washington, D.C. 20044

(202) 305-0269 (tel.)

(202) 305-0275 (fax)

caitlyn.cook@usdoj.gov

PETER W. BROCKER

Trial Attorney

New York Bar No. 5385448

Natural Resources Section

Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611

Washington, D.C. 20044

(202) 305-8636 (tel.)

(202) 305-0506 (fax)

peter.brocker@usdoj.gov

LIANE NOBLE

Assistant United States Attorney

State Bar No. 24079059

U.S. Attorney's Office

903 San Jacinto Blvd., Suite 334

Austin, Texas 78701

(512) 370-1252 (phone)

(512) 916-5854 (fax)

Liane.Noble@usdoj.gov

Attorneys for Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Texas by using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Caitlyn F. Cook

Caitlyn F. Cook

Trial Attorney

Attorney for Defendants